STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RAY SAM KESKIMAKI,

Defendant-Appellant.

UNPUBLISHED
October 16, 2003

No. 243018
Marquette Circuit Court
LC No. 01-038597-FH

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

On May 30, 2002, a jury convicted defendant of operating a vehicle under the influence of intoxicating liquor (OUIL). MCL 257.625(1). The trial court sentenced defendant to nine months in jail as a third-time offender. MCL 257.625(8)(c).[1] We affirm.

As his sole issue on appeal, defendant argues that the trial court abused its discretion by denying his motion to excuse Juror 13 for cause. Defendant contends that, during voir dire, Juror 13 expressed "a state of mind that will prevent the person from rendering a just verdict," and that she had "opinions or conscientious scruples that would improperly influence [her] verdict" under MCR 2.115(D)(4) and (5).

Juror 13 did not sit on the jury that convicted defendant because defense counsel exercised a peremptory challenge to excuse her. As this Court explained in *People v Lee*, 212 Mich App 228, 248-249; 537 NW2d 233 (1995):

> A four-part test is used to determine whether an error in refusing a challenge for cause merits reversal. There must be a clear and independent showing on the record that (1) the court improperly denied a challenge for cause, (2) the aggrieved party exhausted all peremptory challenges, (3) the party demonstrated the desire to excuse another subsequently summoned juror, and (4)

[1] Defendant's judgment of sentence cites the third-time offender statute as MCL 257.6256D; however, it appears that defendant was actually sentenced for his third offense under MCL 257.625(8)(c).

> the juror whom the party wished later to excuse was objectionable. [Citing *People v Lagrone*, 205 Mich App 77, 81; 517 NW2d 270 (1994).]

We reject defendant's argument because, were we to find that the trial court improperly failed to dismiss Juror 13, defendant has failed to establish actionable prejudice that would warrant reversal. While defendant exercised all of his peremptory challenges, he cites no "clear and independent showing on the record" of his "desire to excuse another subsequently summoned juror." There is no indication in the record, or in defendant's brief on appeal, that defense counsel would have excused a later juror with a peremptory challenge. Moreover, defendant does not contend that any of the later jurors were in any way objectionable. Therefore, defendant cannot show that he was prejudiced because he had to exercise one peremptory challenge to excuse Juror 13. Accordingly, reversal is not warranted.[2]

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Bill Schuette

[2] Defendant contends that the trial court's failure to dismiss Juror 13 for cause prevented defense counsel "from making further challenges for cause for fear that none would be granted . . . and for fear of then effectively alienating every prospective juror who perhaps represented an otherwise valid challenge for cause." The record does not support this assertion because (1) there is no indication that defense counsel attempted to excuse another juror for cause or that defense counsel expressed a "fear" that any additional motions would be denied; (2) defendant does not offer an argument on appeal that, but for the trial court's ruling, he would have moved to dismiss another specific juror for cause; and (3) nothing in the trial court's ruling suggested that a subsequent motion to dismiss a juror for cause would be rejected by the trial court; indeed, after it denied defendant's motion to dismiss Juror 13, the trial court excused four other jurors for cause on various grounds.